

Calaveras Superior Court
Civil Law & Motion Calendar Tentative Rulings
Friday, February 14, 2020
Hon. David M. Sanders, Courtroom #2

9:00 AM 19CV44446 Motion Hearing by Ptff for Preliminary Injunction 11/21/2019 03/25/2020 Case Management Conference

Ptff/Pet: Calaveras Residents Against Commercial Marijuana
Def/Res: Board Of Supervisors Of Calaveras County; County Of Calaveras

Atty: Shute Mihaly & Weinberger
Atty:

Tentative Ruling: PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

On November 21, 2019, plaintiff filed a complaint alleging violations of CEQA and state planning and zoning laws pertaining to an ordinance that the Board of Supervisors adopted in October 2019 that allows the growing and cultivation of marijuana under certain guidelines. Plaintiff filed this motion for a preliminary injunction on January 17, 2020.

In *IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69-70, the Court ruled:

"... trial courts should evaluate two interrelated factors when deciding whether or not to issue a preliminary injunction. The first is the likelihood that the plaintiff will prevail on the merits at trial. The second is the interim harm that the plaintiff is likely to sustain if the injunction were denied compared to the harm that the defendant is likely to suffer if the preliminary injunction were issued." As the court in *IT Corp.* further noted: "The ultimate goal of any test to be used in deciding whether a preliminary injunction should issue is to minimize the harm which an erroneous interim decision may cause. [Citation.]" (Id. at p. 73, 196 Cal.Rptr. 715, 672 P.2d 121, italics added.)

Based on these factors, plaintiff's motion is DENIED. The Court finds plaintiff is not likely to prevail on the merits. A judge may not grant an injunction to prevent the execution of a statute by public officials for the public benefit. CC § 3423(d); CCP §526(b)(4). Courts lack jurisdiction to enjoin enforcement of validly adopted, constitutional ordinances. *Xiloj-Itzep v City of Agoura Hills* (1994) 24 CA4th 620, 636. This prohibition does not apply when (1) the statute is unconstitutional on its face, (2) the statute is applied unconstitutionally, (3) the statute does not apply to the plaintiff's activities, or (4) the public official's action exceeds his or her powers. *Conover v Hall* (1974) 11 C3d 842, 850. The Court does not find any of these exceptions exist in this matter; specifically the Court finds the addendum EIR amounted to compliance with the provisions of CEQA.

Second, a consideration of interim harm to plaintiff includes (1) the inadequacy of other remedies, (2) the degree of irreparable injury the denial of the injunction would cause, and (3) the necessity of preserving the status quo. *Take Me Home Rescue v Luri* (2012) 208 CA4th 1342, 1350. Further, a judge must exercise discretion in favor of the party most likely to be injured. The balance of harms dramatically favors denial of a preliminary injunction, because alleged harm to plaintiff by denying an injunction is general, while granting the injunction would cause great immediate harm to many persons. (*White v Davis* (2003) 30 C4th 528, 561.)

Overall, plaintiff has not shown sufficient evidence through their pleadings that a preliminary injunction should be granted at this time. Based on the foregoing, plaintiff's Motion for Order for a Preliminary Injunction is DENIED.

The clerk shall provide notice of this ruling to the parties forthwith. Defendant to prepare a formal order pursuant to Rule 3.1312 in conformity with this ruling.